

Membership Balance Plan  
Government-Industry Advisory Panel

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to section 813(b)(1) of the National Defense Authorization Act for Fiscal Year 2016 (FY 2016 NDAA) (Public Law 114-92) as amended by section 809(f) of the National Defense Authorization Act for Fiscal Year 2017 (“the FY 2017 NDAA”) (Public Law 114-328) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Government-Industry Advisory Panel (“the Panel”).
2. Mission/Function: The Panel, pursuant to section 813(b)(1) of the FY 2016 NDAA as amended by section 809(f) of the FY 2017 NDAA, shall provide to the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of the Defense for Acquisition, Technology, and Logistics (USD(AT&L)), a review of 10 U.S.C. §§ 2320 and 2321, regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interests of the taxpayers and the national defense.

Pursuant to sections 813(b)(3) and (4) of the FY 2016 NDAA as amended by section 809(f) Fiscal Year 2017 NDAA, the Panel, not later than February 1, 2017, shall submit to the Secretary of Defense a final report of its findings and recommendations as a result of the review required by section 813(b)(1) of the FY 2016 NDAA as amended by Fiscal Year 2017 NDAA. Not later than 60 days after receiving the report, the Secretary of Defense shall submit a copy of the report, together with any comments or recommendations to the Congressional Defense committees.

In conducting the review required by section 813(b)(1) of the FY 2016 NDAA and as described in above, the Panel shall give appropriate consideration to the following factors:

- A. Ensuring that the Department of Defense does not pay more than once for the same work.
- B. Ensuring that Department of Defense contractors are appropriately rewarded for their innovation and invention.
- C. Providing for cost-effective reprocurement, sustainment, modification, and upgrades to Department of Defense systems.
- D. Ensuring that the Department of Defense and Department of Defense contractors have the technical data rights necessary to support the modular open system approach requirements set forth in 10 U.S.C. § 2446a, taking into consideration the distinct characteristics of major system platforms, major stem interfaces, and major system components developed exclusively with Federal funds, exclusively at private expense, and with a combination of Federal funds and private expense.
- E. Encouraging the private sector to invest in new products, technologies, processes relevant to the missions of the Department of Defense.
- F. Ensuring that the Department of Defense has appropriate access to innovative products,

Membership Balance Plan  
Government-Industry Advisory Panel

technologies, and processes developed by the private sector for commercial use.

3. Points of View: The Panel shall be composed of no more than 20 members. Pursuant to section 813(b)(2) of the FY 2016 NDAA, Panel members selected from the Federal government will be knowledgeable about technical data issues and appropriately represent the three military departments, as well as the legal, acquisition, logistics, and research and development communities in the Department of Defense; and Panel members selected from the private sector will include independent experts and individuals appropriately representative of the diversity of interested parties, including large and small businesses, traditional and nontraditional government contractors, prime contractors and subcontractors, suppliers of hardware and software, and institutions of higher education.

Members of the Panel who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Panel members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members.

The DoD, unless otherwise instructed by an Act of Congress or Presidential directive, does not use representative members on DoD established or supported advisory committees.

All members of the Panel are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

4. Other Balance Factors: N/A
5. Candidate Identification Process: The DoD, in selecting potential candidates for the Panel, reviews the educational and professional credentials of individuals with extensive professional experience in the points of view described above. Potential candidates may be gathered and identified by the USD(AT&L) and the Panel's staff. Once potential candidates are identified, the Designated Federal Officer (DFO) will review the educational and professional credentials of each individual relative to the mission of the Panel and narrow the list of potential candidates. The DFO will forward a balanced list of potential candidates to the USD(AT&L). The USD(AT&L) will verify the balance between the educational and professional credentials of the individual candidates and the mission of the Panel.

Prior to the formal nomination, the list of candidates undergoes a review by the Office of General Counsel for the DoD and the Office of the Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the Panel's statute, charter, and membership balance plan. Following this review, the USD(AT&L) discusses his or her potential nominees with the Secretary of Defense or the Deputy Secretary of Defense and receives authorization to proceed with the nominations. Pursuant to DoD policy, only the Secretary or the Deputy Secretary of Defense can invite or approve the appointment of individuals to serve on DoD established or supported advisory committees and subcommittees.

Membership Balance Plan  
Government-Industry Advisory Panel

Following the Secretary of Defense or the Deputy Secretary of Defense authorization, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics for advisory committee members.

The USD(AT&L) is authorized to administratively certify the appointment of the Panel members that were previously authorized by the Secretary of Defense or the Deputy Secretary of Defense. Panel members will be appointed for a term of service equal to the life of the Panel, subject to annual renewal as appropriate. Consistent with Deputy Secretary of Defense policy and the authority delegated to the ACMO by the Assistant Deputy Chief Management Officer, the ACMO is authorized to administratively certify the annual renewal of appointment of Panel members.

Membership vacancies for the Panel and any subcommittees will be filled in the same manner as described in the previous four paragraphs.

6. Subcommittee Balance: The DoD, when necessary and consistent with the Panel's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Panel.

Subcommittee members may be members of the Panel or new nominees, as recommended by the USD(AT&L) and based upon the points of view represented and the functions to be performed. The Secretary of Defense or the Deputy Secretary of Defense shall authorize the appointment of subcommittee members if they have not been previously appointed to serve on the Panel or another DoD advisory committee. The USD(AT&L) is authorized to administratively certify the appointment of subcommittee members that were previously authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts or consultants pursuant to 5 U.S.C. §3109 to serve as SGE members. Those members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members. Subcommittee members will be appointed for a term of service equal to the life of the subcommittee, subject to annual renewal as appropriate.

7. Other: As nominees are considered for appointment to the Panel, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: March 1, 2017